

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
WESTGATE RESORTS, INC. and)	
C. LANEY AND SONS)	
CONSTRUCTION, INC.)	
)	
)	
)	
RESPONDENTS)	CASE NO. WPC07-0127

COMMISSIONER’S ORDER AND ASSESSMENT

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “Department”).

II.

Westgate Resorts, Inc. (hereinafter “Respondent Westgate”) is the owner and developer of an approximately 200-acre commercial project, the Westgate Smoky Mountain Resort, located in Sevier County in Gatlinburg, Tennessee (hereinafter the “site”). Service of process may be made on Respondent Westgate through its registered

agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203.

III.

C. Laney and Sons Construction, Inc. (hereinafter “Respondent C. Laney”) is the primary contractor for the site and is authorized to conduct business in the State of Tennessee. Service of process may be made on Respondent C. Laney through its registered agent, Rosemary Laney, at 1716 Newport Highway, Sevierville, Tennessee 37876.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”).

V.

The Respondents are “persons” as defined at T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondents have violated the Act.

VI.

The unnamed tributaries to the West Prong of the Little Pigeon River, the West Prong of the Little Pigeon River, the unnamed tributaries of Beech Branch, and Beech Branch, are referred to herein as “waters of the state,” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications For Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, the unnamed tributaries to the West Prong of the Little Pigeon River, the West Prong of the Little Pigeon River, the unnamed tributaries to Beech Branch, and Beech Branch have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Additionally, the West Prong of the Little Pigeon River is also classified as a domestic and industrial water supply and a trout stream.

Further, the West Prong of the Little Pigeon River is considered an impaired waterbody due to biological integrity loss, *Escherichia coli*, and Phosphorous caused by septic tanks, collection system failure, municipal point sources, and discharges from municipal separate storm sewer system (MS4) area. Beech Branch is considered an impaired waterbody due to *Escherichia coli*, from septic tanks.

VII.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI).

VIII.

T.C.A. §69-3-108 requires a person to obtain a permit from the Department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification.

FACTS

IX.

On March 23, 2000, personnel with the Division of Water Pollution Control (hereinafter the “Division”) conducted a complaint investigation at the site in regards to a citizen complaint concerning discharges of sediment-laden stormwater leaving the site and entering the West Prong of the Little Pigeon River. During the course of the investigation, Division personnel observed sediment deposition in the stream channel of

the unnamed tributary to the West Prong of the Little Pigeon River, downstream of a newly constructed road crossing at the entrance of the site. Effective erosion prevention and sediment control (EPSC) measures were not implemented throughout the site, and specifically at the road crossing, allowing sediment to migrate off site during rain events. Upon further investigation, it was determined that the road crossing was installed without authorization under an ARAP.

X.

On April 13, 2000, the Division received an additional citizen complaint that an unnamed tributary to the West Prong of the Little Pigeon River, coming from the site, was full of mud and no sediment controls installed.

XI.

On April 26, 2000, the Division issued a Notice of Violation (NOV) to Respondent Westgate regarding the violations observed during the March 23, 2000, site investigation. The NOV requested that effective EPSC measures be installed immediately and maintained to prevent sediment from entering waters of the state.

XII.

On February 9, 2001, the Division received an additional citizen complaint regarding construction activities at the site. The complaint alleged that concrete foundations were being poured at the site and that half of the foundation material was in the creek.

XIII.

On February 22, 2001, Division personnel conducted a complaint investigation at the site and observed improperly installed EPSC measures allowing sediment-laden stormwater to enter an unnamed tributary to the West Prong of the Little Pigeon River, and migrate off site and enter the West Prong of the Little Pigeon River, approximately 500 feet downstream of the site across Highway 441.

XIV.

On February 28, 2001, Division personnel conducted a site investigation and again observed improperly installed and poorly maintained EPSC measures throughout the site, EPSC measures installed in the stream channel of an unnamed tributary to the West Prong of the Little Pigeon River, and sediment deposition and construction debris in the unnamed tributary resulting in a condition of pollution.

XV.

On March 5, 2001, the Division issued a second NOV to Respondent Westgate for the violations observed during the February 16 and 22, 2001, site investigations. The NOV requested Respondent Westgate to immediately install appropriate EPSC measures throughout the site. The NOV further requested Respondent Westgate to attend a Compliance Review Meeting (CRM) to be held at the Division's Knoxville office on March 21, 2001, to discuss ongoing compliance issues at the site.

XVI.

On March 26, 2001, Division personnel conducted a site investigation and observed sediment-laden stormwater entering the unnamed tributary to the West Prong of the Little Pigeon River, resulting in a condition of pollution.

XVII.

On March 27, 2001, a CRM was held to discuss compliance issues at the site. In attendance, were representatives for all Respondents and representatives from Respondent Westgate's engineering firm, Barge Waggoner, Sumner & Cannon, Inc.

XVIII.

On May 16, 2001, the Division received a NOI and revised SWPPP for the site. The NOI listed Respondent Westgate as the owner/developer of the site, Mark Waltrip as the representative of Respondent Westgate, Respondent C. Laney as the primary contractor, Respondent Blalock as an additional contractor, and Hardaway Construction Corporation of Tennessee as an additional contractor. The NOI indicated that approximately 24 acres would be disturbed.

XIX.

On May 30, 2001, the Division issued a Notice of Coverage (NOC) to Respondent Westgate for coverage under the TNCGP for the site. The NOC further notified Respondent Westgate that the receiving stream indicated on the NOI was considered impaired for siltation, and that additional pollution prevention requirements

would apply. Additionally, the NOC notified Respondent Westgate of the possible presence of state and/or federally listed endangered or threatened species at, or downstream of, the site.

XX.

On June 7, 2001, the Division received a NOI for Phase 5 of the Westgate Smoky Mountain Resort project. The NOI listed Respondent Westgate as the owner/developer, Mark Waltrip as the representative of Respondent Westgate, Respondent C. Laney as the site's primary contractor, and Respondent Blalock as an additional contractor. The NOI indicated that the proposed disturbed area would be approximately 3.5 acres.

XXI.

On August 24, 2001, Division personnel conducted a site investigation in regards to citizen complaints concerning sediment-laden stormwater leaving the site. While on site, Division personnel observed that additional clearing and grading activities were underway, and that two road crossings had been constructed over an unnamed tributary to the West Prong of the Little Pigeon River near the stable area. Additionally, Division personnel observed evidence of construction equipment operating in the stream channel, the stream banks had been cleared, and no EPSC measures had been implemented, allowing sediment and construction debris to enter the unnamed tributary to the West Prong of the Little Pigeon River, resulting in a condition of pollution. Upon further investigation, it was determined that these road crossings had been constructed without authorization under an ARAP.

Further, Division personnel observed that EPSC measures, consisting of inlet protection for disturbed areas, outlet protection for sediment traps, and construction road stabilization had not been implemented in accordance with the site SWPPP.

XXII.

On August 29, 2001, the Division issued a third NOV to Respondent Westgate regarding the violations observed during the August 24, 2001, site investigation. The NOV notified the Respondents that all EPSC measures indicated in the site SWPPP should be implemented and maintained. Additionally, the Division notified Respondent Westgate that the EPSCs indicated in the site SWPPP for Phase 5 were inadequate and that additional EPSC measures would need to be designed, implemented, and maintained to prevent discharges of sediment.

XXIII

On October 8, 2001, the Division received correspondence from Respondent Westgate regarding the August 29, 2001, NOV which addressed the following issues:

- EPSC measures at the sediment traps indicated in the August 29, 2001, NOV were not implemented because Phases I and II of the project were completed.
- Gravel stabilization of the construction road to Phase V will be ongoing and maintained.
- Additional EPSC measures will be added in Phase V as needed.
- The culvert for the road crossing in Phase V was not installed by any of the Respondents, but was present prior to construction.

- Bare slopes along parking areas had been hydroseeded and additional silt fence installed.
- Respondent Westgate's engineer, Barge, Waggoner, Sumner and Cannon, Inc. was to perform and record construction reviews.

XXIV.

On July 27, 2004, Division personnel conducted a site investigation and observed that large, steep banks were left unstable, and that approximately one mile of new road had been cut without any EPSC measures implemented. Large amounts of sediment were observed migrating down the road and deposited throughout surrounding wooded areas and the unnamed tributary to the West Prong of the Little Pigeon River at several locations. Additionally, sediment-laden water was observed migrating off site and entering the West Prong of the Little Pigeon River, resulting in a condition of pollution.

XXV.

On August 3, 2004, the Division issued a fourth NOV to Respondent Westgate regarding the violations observed during the July 27, 2004, site investigation. The NOV recommended that EPSC measures be implemented immediately and that the flow of water along the new roadway be controlled.

XXVI.

On September 1, 2004, the Division received correspondence from Respondent C. Laney regarding the July 27, 2004, site investigation. The correspondence stated that

Respondent Westgate would be applying for coverage under the TNCGP for newly acquired property, and that Respondent C. Laney had placed check dams in ditches to control flow velocity and retain silt, and had proposed provisions for hydroseeding along the new road.

Additionally, on this date, the Division received a NOI and SWPPP from Respondent Westgate to obtain coverage under the TNCGP for Phases 12, 13, 14, and 18 of the project. The NOI indicated that approximately 51 acres would be disturbed during this portion of the development. The NOI listed Respondent Westgate as the owner/developer of the site, Mark Waltrip as the representative for Respondent Westgate, and Respondent C. Laney as the primary contractor.

XXVII.

On September 23, 2004, the Division issued correspondence notifying Respondent Westgate that coverage under the TNCGP, for Phases 9 through 19 of the project, had been granted and would be added to the existing permit coverage. The correspondence further notified Respondent Westgate that the site SWPPP, submitted September 1, 2004, stated that no more than 10 acres of land would be disturbed at a time during any current phase of work. The SWPPP also stated that Phases 1 through 5 of the project were complete, and Phase 6 was near completion.

XXVIII.

On October 8, 2004, the Division received a citizen complaint regarding tree-cutting occurring at the site and manure entering a stream at the site's horse stables.

XXIX.

On October 19, 2004, Division personnel conducted a site investigation and observed that EPSC measures along the construction road, consisting of check dams, were not installed correctly. Sediment-laden water was observed flowing around the check dams and down the road, entering storm drains and discharging into the unnamed tributary to the West Prong of the Little Pigeon River. Also, the banks of the east end of the site were unstable and EPSC measures were inadequate allowing sediment-laden water to enter the storm drains and discharge to the unnamed tributary to the West Prong of the Little Pigeon River. Additionally on this date, the Division received a NOI for Phases 12, 13, 14, 18, and access roads. The NOI listed Respondent Westgate as the owner/developer, Mark Waltrip as the representative of Respondent Westgate, and Respondent C. Laney as the primary contractor.

XXX.

On October 21, 2004, Division personnel conducted a complaint investigation at the site in response to the complaint received on October 8, 2004. Division personnel observed that an animal waste/bedding material mixture from the horse stables was stockpiled and stored behind the stable area, and placed at the top of a steep slope directly above an unnamed tributary to the West Prong of the Little Pigeon River. A portion of the pile had fallen down the slope and entered the unnamed tributary. Division personnel notified representatives of Respondent Westgate and the representatives agreed to remove the animal waste stockpiled at the site, and remove future animal waste from the stable area quickly. Additionally, representatives of Respondent Westgate agreed to stabilize

and vegetate the stream bank below the stable area, and install silt fence between the stream and stable area.

XXXI.

On October 26, 2004, the Division issued a fifth NOV to Respondent Westgate for violations observed during the October 19 and 21, 2004, site investigations. The NOV further notified Respondent Westgate that inspection reports were not being submitted to the Division as required. Additionally, the NOV requested Respondent Westgate to implement and maintain EPSC measures, and to control the flow of water entering storm drain systems and streams.

XXXII.

On November 1, 2004, the Division received an ARAP application seeking coverage under the General ARAP for Road Crossings for construction of a road crossing near the pool building at the site. The application listed Respondent Westgate and Mark Waltrip as the applicant. On November 24, 2004, the Division issued a NOC for the road crossing project.

XXXIII.

On December 9, 2004, Division personnel performed a site investigation and observed dark, sediment-laden water entering the West Prong of the Little Pigeon River from the site. The West Prong of the Little Pigeon River had a large sediment plume, approximately 1,000 feet in length, along the left bank of the river. At the site, Division

personnel observed sediment-laden water entering an unnamed tributary to the West Prong of the Little Pigeon River from a large mound of exposed soil at the end of the new gravel road. Sediment-laden water was also entering the unnamed tributary to the West Prong of the Little Pigeon River from the stable area, and just above the stable area where a mudslide had occurred. Further, sediment-laden water was observed entering the unnamed tributary to the West Prong of the Little Pigeon River at the maintenance area, flowing through the site and entering the West Prong of the Little Pigeon River.

Additionally, Division personnel observed that EPSC measures along the access road were inadequate, allowing sediment-laden water to run along the access road and enter Beech Branch at the intersection of Beech Branch Road and Access Road.

XXXIV.

On December 13, 2004, the Division issued a sixth NOV to Respondent Westgate for violations observed during the December 9, 2004, site investigation. The NOV scheduled a CRM to be held on December 21, 2004, to discuss ongoing compliance issues occurring at the site.

XXXV.

The Division received correspondence from the U.S. Department of the Interior's National Park Service, dated December 20, 2004, expressing concern of impacts to the West Prong of the Little Pigeon River from activities occurring at the site. The correspondence stated that personnel with the National Park Service had visited the site and documented considerable pollution occurring.

XXXVI.

On December 20, 2004, the Division received correspondence from Respondent Westgate stating that Respondent Westgate would attend the CRM scheduled for December 21, 2004.

XXXVII.

On December 21, 2004, a CRM was held between Division personnel and the Respondents. Also in attendance were personnel from the City of Gatlinburg, the National Park Service, and the site's current engineer Vision Engineering and Development Services, Inc. (hereinafter "Vision Engineering"). The following issues were discussed during the course of the CRM:

- The Division notified all parties that the West Prong of the Little Pigeon River had recently been classified as a Tier II stream and subject to more stringent regulations.
- EPSC issues observed during the December 9, 2004, site investigation, and ongoing improvements and historical information.
- Potential impacts to Great Smoky Mountains National Park property.

The Division requested that Respondent Westgate develop a new SWPPP for the entire development, including any redesigned or replacement of existing EPSC measures not achieving compliance. The new SWPPP was to be submitted to the Division by January 4, 2005.

XXXVIII.

On December 30, 2004, the Division received a progress report from Vision Engineering regarding EPSC measures at the site. The progress report stated that new EPSC measures had been implemented on site and additional EPSC material had been delivered recently for installation.

XII.

On January 4, 2005, the Division received the revised SWPPP, requested at the December 21, 2004, CRM.

XL.

On January 10, 2005, the Division received a progress report from Vision Engineering regarding the results of the monitoring of EPSC measures at the site. The progress report detailed EPSC measures recently installed at the site.

XLI.

On April 21, 2005, the Division received a progress report from Vision Engineering regarding the results of the monitoring of EPSC measures at the site. The progress report provided details of EPSC measures being implemented and maintained at the site.

XLII.

On July 8, 2005, the Division received a progress report from Vision Engineering regarding the results of the monitoring of EPSC measures at the site. The progress report provided details of EPSC measures being implemented and maintained at the site.

XLIII.

On April 25, 2006, Division personnel visited the site and observed that EPSC measures along construction roads, consisting of check dams, were not installed correctly allowing sediment to flow around the check dams and migrate down the road and enter sediment traps. The sediment traps at the end of the roadside ditches were not maintained and sediment had overflowed the traps and entered the woods.

XLIV.

On August 28, 2006, Division personnel conducted a complaint investigation at the site and observed EPSC measures in need of maintenance and portions of the site remained unstable. Sediment traps along the roadside were full of sediment and overflowing, allowing sediment and rocks to migrate into the wooded area. The area near the power lines were in need of stabilization, and the area around the horse stables remained unstable, allowing eroded sediment to enter the unnamed tributary to the West Prong of the Little Pigeon River. Additionally, at the corner of the maintenance building, a sediment trail was observed leading to an unnamed tributary to the West Prong of the Little Pigeon River. Division personnel met with Respondent C. Laney and Respondent Blalock and notified them of these issues.

XLV.

On April 24, 2007, Division personnel conducted a site investigation and observed that portions of the site remained unstabilized without effective EPSC measures, and EPSC measures installed needed to be maintained. Roadside embankments in Phases 17 through 19 remained bare, sediment traps were full and some overflowing, and the corner of the maintenance building continued to erode. The sediment trap above the horse stable area contained a polyacrylamide flocculant with no settling locations allowing sediment to continue to migrate and enter the unnamed tributary to the West Prong of the Little Pigeon River. Also, EPSC measures had been installed in the stream channel of the unnamed tributary. Further, open disturbed areas were not limited to 10 acres or less as specified in the site SWPPP.

XLVI.

On April 30, 2007, the Division issued a seventh NOV to the Respondents regarding the violations observed during the April 24, 2007, site investigation. The NOV requested the Respondents to submit a response to the Division, within one month, detailing the steps taken to confirm that each item of the SWPPP has been implemented. The Respondents were further notified that if the current SWPPP is inadequate, or needed to be modified, that a revised SWPPP should be submitted to the Division.

XLVII.

On May 14, 2007, the National Park Service issued correspondence to the Respondents regarding activities occurring at the site. The correspondence notified the

Respondents of the National Park Services continued concern of activities occurring at the site and potential impacts to Great Smoky Mountain National Park resources.

XLVIII.

During the course of investigating this matter, the Department incurred damages in the amount of THREE THOUSAND TWO HUNDRED TEN DOLLARS AND THIRTY-SEVEN CENTS (\$3,210.37).

VIOLATIONS

IVL.

By physically altering waters of the state without authorization under an ARAP, and by violating the terms of the TNCGP, the Respondents have violated T.C.A. §§69-3-108(a) and (b) and 69-3-114(b), which state:

T.C.A. §§69-3-108(a) and (b):

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

L.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondents have violated T.C.A. §§69-3-114(a), as referenced below, and 69-3-114(b), as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

LI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115, and 69-3-116, I, James H. Fyke, hereby issue the following ORDER and ASSESSMENT to the Respondents:

1. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order, implement appropriate EPSC measures, designed by a professional engineer or other qualified professional, to assure the site is completely stabilized and that no material leaves the site and enters waters of the state. EPSC measures should be designed for steep slopes and capable of withstanding storm events of 5-year, 24-hour size. The Respondents shall provide written notification of completion of stabilization activities to the manager of the Division's Environmental Field Office in Knoxville (EFOK) located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondents shall maintain appropriate professionally designed EPSC measures to assure complete stabilization and to assure that no material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until project completion.
3. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order, submit a detailed construction plan which shall include, but not be limited to, a detailed outline of construction activities occurring at the site with a schedule of development for each phase currently underway, a detailed outline

with maps illustrating EPSC measures implemented on site ensuring that no further sediment releases will occur during 5-year, 24-hour storm events.

4. The Respondents shall, within FOURTEEN (14) DAYS of receipt of this Order, begin conducting inspections of the site in accordance with Sections 3.5.8.1, 3.5.8.2, 4.4.1, and 4.4.2 of the TNCGP and submit the required inspection reports to the manager of the EFOK on a quarterly basis until project completion. The first inspection reports will be due by September 1, 2007.
5. The Respondents shall, within FIVE (5) DAYS following each rain event of greater than 0.5 inches, submit to the Division, photo-documentation of the condition of the Westgate discharge at the following three locations: the unnamed tributary which leaves the site and enters Beech Branch near Beech Branch Road, the stream leaving the site near the main entrance of the site as it flows beneath the bridge on the east side of Highway 441, the unnamed tributary to the West Prong of the Little Pigeon River that leaves the southern portion of the site just north of the 321/Foothills Parkway bypass around Gatlinburg.
6. The Respondents are hereby assessed a CIVIL PENALTY in the amount of ONE HUNDRED SEVENTY FOUR THOUSAND DOLLARS (\$174,000.00).
 - a. The Respondents shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) to the Division within THIRTY (30) DAYS of receipt of this Order.

- b. The Respondents shall pay THIRTY THOUSAND DOLLARS (\$30,000.00) to the Division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 1 above.
 - c. The Respondents shall pay THIRTY THOUSAND DOLLARS (\$30,000.00) to the Division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 2 above.
 - d. The Respondents shall pay TWENTY THOUSAND DOLLARS (\$20,000.00) to the Division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 3 above.
 - e. The Respondents shall pay TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) to the Division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 4 above.
 - f. The Respondents shall pay NINETEEN THOUSAND DOLLARS (\$19,000.00) to the Division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 5 above.
7. The Respondents are hereby assessed DAMAGES in the amount of THREE THOUSAND TWO HUNDRED TEN DOLLARS AND THIRTY-SEVEN CENTS (3,210.37) to be paid to the Division within THIRTY (30) DAYS of receipt of this Order.
8. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 11th day of December, 2007.


James H. Fyke, Commissioner

Tennessee Department of Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301

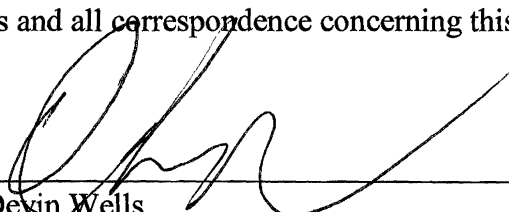
et seq. (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Payments of the civil penalty shall be made payable to the Treasurer, State of Tennessee. All correspondence, including civil penalty payments or petition to appeal which is filed, should be addressed to Devin Wells, Assistant General Counsel, Office of General Counsel, Tennessee Department of Environment and Conservation, 401 Church

Street, L&C Tower 20th Floor, Nashville, Tennessee 37243. Please write your case number, **WPC07-0127** on all payments and all correspondence concerning this matter.



Devin Wells

Assistant General Counsel
Tennessee Department of
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